

II. REMARKS

The Office Action dated June 15, 2009, has been received and carefully noted. The amendments made herein and the following remarks are submitted as a full and complete response thereto.

Claims 1-11 are pending.

By this Amendment, claims 1 and 4-11 are amended, and new claims 12-14 are added. Support for this amendment can be found in the specification and claims as originally filed. For example, claims 4-10 have been amended to remove preferred subject matter. Support for the amendments to claims 1 and 11 can be found in claim 10 and in the specification at least on page 6, lines 14-16. Support for new claims 12-14 can be found in claims 6 and 10. Applicants submit that no new matter has been added and respectfully request reconsideration and withdrawal of the pending rejections.

Rejection under 35 U.S.C. § 112

Claims 4-10 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. In particular, the Examiner objects to the use of the word “preferably” in claims 4-10. Applicants have amended the claims to remove the preferred subject matter and request reconsideration and withdrawal of the rejection under 35 U.S.C. § 112, second paragraph.

Rejections under 35 U.S.C. § 102(a)

1. *Wester*

Claims 1-2, 4-5 and 8 are rejected under 35 U.S.C. §102(a) as being anticipated by Wester et al. (WO 02/082929, hereinafter “Wester”). Applicants traverse the rejection.

Presently amended claim 1 of the present application is directed to “[b]reakfast cereals with decreased soaking after liquid is added, characterised in that the cereals comprise from 2.2 to 25 weight-% plant sterol esters and at least 50 weight % of puffed and/or extruded cereals” (emphasis added). Claims 2-10 depend from independent claim 1.

Applicants submit that Wester does not disclose the presently claimed invention, in particular “[b]reakfast cereals... comprising from 2.2 to 25 weight-%

plant sterol esters and at least 50 weight % of puffed and/or extruded cereals” (claim 1). Applicants note that the cited Example in Wester (Example 12) discloses a fruit muesli, which does not comprise “at least 50 weight % of puffed and/or extruded cereals.” Applicants note that, unlike mueslis, puffed and/or extruded cereals have been found to be very prone to soaking. Applicants submit that breakfast cereals comprising at least 50 weight % of puffed and/or extruded cereals exhibit decreased soaking when comprising from 2.2 to 25 weight-% of plant sterol esters (see Example 1 of the present specification).

For at least the above reasons, Applicants submit that Wester does not disclose the presently claimed invention. Therefore, Applicants respectfully request reconsideration and withdrawal of the rejection of claims 1-2, 4-5 and 8 under 35 U.S.C. § 102(a).

2. *Plank*

Claims 1, 3 and 11 are rejected under 35 U.S.C. §102(e) as being anticipated by Plank et al. (U.S. Publication No. 2003/0235643, hereinafter “Plank”). Applicants traverse the rejection.

Claims 1 and 3 have been discussed above. Presently amended claim 11 of the presently claimed invention is directed to a “method for decreasing soaking of breakfast cereals after liquid is added characterised in that from 2.2 to 25 weight-% plant sterol esters is added to breakfast cereals, and wherein the cereal portion comprises at least 50 weight % of puffed and/or extruded cereals” (emphasis added).

Applicants submit that Plank does not disclose the presently claimed invention. Plank discloses a “food intermediate [which]... comprises a polysaccharide and a phytosterol based component” (paragraph [0018]). Plank discloses that the food intermediate can be used in a cereal dough which is cooked and formed into pellets, and made into cereal flakes (paragraph [0045]). Applicants submit that cereal flakes are not cereals comprising “at least 50 weight % of puffed and/or extruded cereals” (claims 1 and 11). As noted above, Applicants submit that puffed and/or extruded cereals have been found to be very prone to soaking. Applicants submit that breakfast cereals comprising at least 50 weight % of puffed and/or puffed cereals exhibit decreased soaking when comprising from 2.2 to 25 weight-% of plant sterol esters (see Example 1 of the present specification).

In addition, Applicants submit that although Plank discloses that the food intermediate composition comprises “approximately 10 to 20% by weight” of sterols. Plank does not specifically disclose an amount of plant sterol esters, let alone the claimed “2.2 to 25 weight-% of plant sterol esters.”

For at least the above reasons, Applicants submit that Plank does not disclose the presently claimed invention. Therefore, Applicants respectfully request reconsideration and withdrawal of the rejection of claims 1, 3, and 11 under 35 U.S.C. § 102(e).

Rejections under 35 U.S.C. § 103(a)

1. *Wester*

Claims 6-7 and 9 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Wester*. Applicants traverse the rejection.

Claims 6-7 and 9 depend from independent claim 1, which has been discussed above. *Wester* and its deficiencies have also been discussed above.

As discussed above, Applicants submit that *Wester* does not disclose the presently claimed invention. Applicants submit that based on the teachings of *Wester* and without the benefit of hindsight, one of ordinary skill in the art would not understand that breakfast cereals comprising at least 50 weight % of puffed and/or extruded cereals could have decreased soaking characteristics with the addition of “from 2.2 to 25 weight-% of plant sterol esters” (claim 1). Applicants submit that this unexpected result is not taught or suggested by *Wester*.

For at least the above reasons, Applicants request reconsideration and withdrawal of the rejection of claims 6-7 and 9 under 35 U.S.C. § 103(a).

2. *Wester and Plank*

Claim 10 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Wester* in view of *Plank*.

Claim 10 depends from independent claim 1, which has been discussed above. *Wester* and *Plank* and their deficiencies have also been discussed above. As discussed above, Applicants submit that *Wester* and *Plank* do not disclose the presently claimed invention. Applicants submit that based on the teachings of *Wester* and without the benefit of hindsight, one of ordinary skill in the art would not understand that breakfast cereals comprising at least 50 weight % of puffed and/or

extruded cereals could have decreased soaking characteristics with the addition of “from 2.2 to 25 weight-% of plant sterol esters” (claim 1). Applicants submit that this unexpected result is not taught or suggested by Wester or Plank. Applicants further submit that the complex disclosed in Plank, which is a complex made of sterol or sterol esters and amylopectin/beta-glucan has sterol or sterol esters which are sequestered into the amylopectin/beta-glucan, and therefore one of ordinary skill in the art, based on the teachings of Plank, would not understand that the addition of plant sterol esters in an amount of from 2.2 to 25 weight-% could result in decreased soaking. Therefore, Applicants submit that the presently claimed invention is not obvious in light of Wester and Plank.

III. CONCLUSION

Applicants respectfully submit that this application is in condition for allowance and such action is earnestly solicited. If the Examiner believes that anything further is desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact Applicants' undersigned representative at the telephone number listed below to schedule a personal or telephone interview to discuss any remaining issues.

In the event this response is not timely filed, the Applicants hereby petition for an appropriate extension of time. The fee for this extension, along with any other additional fees which may be required with respect to this response, may be charged to Deposit Account No. 01-2300, referencing Attorney Docket No. 019075-00069.

Respectfully submitted,



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